

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MCI WORLDCOM NETWORK SERVICES,
INC.

Plaintiff,

v.

ATLAS EXCAVATING, INC.,

Defendant.

No. 02 C 4394

Judge Moran

Magistrate Judge Brown

NOTICE OF MOTION

TO: John P. Morrison
Robert P. Brown
Bell Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street, Suite 3300
Chicago, IL 60602

James J. Proszek
Kimberly R. Beidler
Hall Estill Hardwick Gable Golden
& Nelson, P.C.
320 South Boston Avenue, Suite 400
Tulsa, OK 74103-3708

PLEASE TAKE NOTICE that on **November 25, 2003 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable James P. Moran or any judge sitting in his stead, in the courtroom usually occupied by him in Room 1843 of the Federal Building and shall then and there present **Defendants Motion for Leave to File its Countclaim, Third Amended Complaint and Comparative Fault Affirmative Defense**, a copy of which is attached hereto and hereby served upon you.

ATLAS EXCAVATING, INC.

By: 

One of Its Attorneys

James K. Borcia, Esq.
David O. Yuen, Esq.
Tressler, Soderstrom, Maloney & Priess
233 South Wacker Drive, 22nd Floor
Chicago, IL 60606
(312) 627-4000

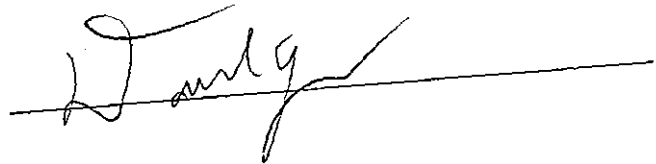
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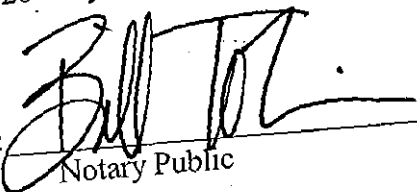
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PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he served copies of the above documents upon the attorneys shown above via facsimile on the 20th day of November, 2003.



Subscribed and Sworn to before me
this 20th day of November, 2003.

By: 
Notary Public



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MCI WORLDCOM NETWORK SERVICES,)
INC.)

Plaintiff/Counter-Defendant,)

v.)

ATLAS EXCAVATING, INC.,)

Defendant/Counter-Plaintiff.)

No. 02 C 4394

Judge Moran

Magistrate Judge Brown

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FILED
NOV 20 2003
U.S. DISTRICT COURT
EASTERN DIVISION
NOV 26 2003
DOCKETED

**MOTION FOR LEAVE TO FILE COUNTERCLAIM, THIRD AMENDED COMPLAINT
AND COMPARITIVE FAULT AFFIRMATIVE DEFENSE**

Defendants, Atlas Excavating, Inc. ("Atlas"), by and through its attorneys, Tressler, Soderstrom, Maloney & Priess, hereby moves this Court for leave to file its Counterclaim, Third Party Complaint and Comparative Fault Affirmative Defense, *instanter*, and in support thereof states as follows:

1. Evidence has been presented through various depositions that AT&T Corporation ("AT&T") located and marked the utility lines that are the subject of Plaintiff's Complaint in this lawsuit. These depositions have also revealed that the location of these lines was incorrectly marked.
2. In its Complaint, Plaintiff alleges that it marked the location of the utility lines.
3. Atlas' main defense to the Complaint is that the location of the lines was not marked properly.
4. The granting of this Motion will prejudice no party, as discovery is ongoing and no trial date has been set.

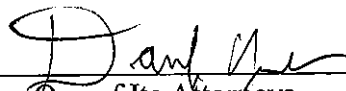
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5. A copy of the Counterclaim, Third-Party Complaint and Comparative Fault Affirmative Defense are attached to this Motion.

WHEREFORE, Defendant, Atlas Excavating, Inc., respectfully requests the court to file its Counterclaim, Third-Party Complaint and Comparative Fault Affirmative Defense, *instantly*.

ATLAS EXCAVATING, INC.

By: _____


One of Its Attorneys

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